

Applic. No. 10/801,965
Amdt. dated December 22, 2004
Reply to Office action of August 26, 2004

Remarks/Arguments:

Reconsideration of the application is requested.

Claims 1-11 remain in the application.

In item 2 on page 2 of the above-identified Office action, claims 1-2, 4, and 10-11 have been rejected as being fully anticipated by Nishiwaki (JP 11-351737) under 35 U.S.C. § 102.

As will be explained below, it is believed that the claims were patentable over the cited art in their original form and the claims have, therefore, not been amended to overcome the references.

Before discussing the prior art in detail, it is believed that a brief review of the invention as claimed, would be helpful.

Claim 1 calls for, *inter alia*:

at least one drawer disposed in the interior space for storing bottles.

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The Nishiwaki reference discloses a bottle shelf for a refrigerator in which a plurality of wine bottles of different diameter or length can be laid freely.

Applicants respectfully disagree with the Examiner's comments on page 2 of the Office action, that the Nishiwaki reference discloses a drawer (12a).

The following definition for a drawer is from Webster's Third New International Dictionary. A drawer is defined as: a sliding box or receptacle that is opened by pulling out and closed by pushing in.

The Nishiwaki reference abstract explicitly discloses a shelf (12a). A shelf is not constructed to pull out or push in. Figs. 1-17 of Nishiwaki disclose a shelf and not a drawer. Therefore, it is respectfully believed that the Examiner's comments that the Nishiwaki reference discloses a drawer are not correct.

The reference does not show at least one drawer disposed in the interior space for storing bottles, as recited in claim 1 of the instant application. The Nishiwaki reference discloses a shelf disposed in a refrigerator. Nishiwaki does not disclose a drawer. This is contrary to the invention of the

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instant application as claimed, in which at least one drawer is disposed in the interior space for storing bottles.

Since claim 1 is believed to be allowable over Nishiwaki, dependent claim 2, 4, and 10-11 are believed to be allowable over Nishiwaki as well.

In item 4 on pages 2-3 of the Office action, claim 3 has been rejected as being obvious over Nishiwaki (JP 11-351737) under 35 U.S.C. § 103. Since claim 1 is believed to be allowable over Nishiwaki, dependent claim 3 is believed to be allowable over Nishiwaki as well.

In item 5 on page 3 of the Office action, claims 1, 6-9, and 11 have been rejected as being obvious over Bennett (U.S. Patent No. 5,330,261) in view of McConnell (U.S. Patent No. 4,101,233) under 35 U.S.C. § 103.

Claim 1 also calls for, *inter alia*:

the at least one drawer having a plurality of rods to be releasably mounted parallel to and spaced apart from one another between the two opposite sides of the frame at selectable distances from one another.

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The Bennett reference discloses a refrigerator having a plurality of conventional storage racks (56) upon which products are stored.

Applicants respectfully disagree with the Examiner's comments on page 3 of the Office action, that the Bennett reference discloses a drawer (56).

The Bennett reference explicitly discloses a continuous planar rack (56). A rack is not constructed to pull out or push in. Therefore, based on the above-provided definition of a drawer, it is respectfully believed that the Examiner's comments that the Bennett reference discloses a drawer are not correct.

The McConnell reference discloses panel mounting clip for a storage rack. The rack has C-shaped deck panels (60) that include an elongated flat rectangular platform.

Applicants respectfully disagree with the Examiner's comments on page 3 of the Office action, that the McConnell reference discloses a drawer.

The McConnell reference explicitly discloses a rack. A rack is not constructed to pull out or push in. Therefore, based on the above-provided definition of a drawer, it is

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respectfully believed that the Examiner's comments that the McConnell reference discloses a drawer are not correct.

Moreover, applicants respectfully disagree with the Examiner's comments that the McConnell reference discloses a plurality of rods (60). The McConnell reference discloses C-shaped deck panels (60), which are disposed on spaced-apart beams (70). The C-shaped deck panels are not rods. Therefore, the Examiner's comments that the McConnell reference discloses rods (60) are not correct.

It is a requirement for a *prima facie* case of obviousness, that the prior art references must teach or suggest all the claim limitations.

The references do not show or suggest at least one drawer disposed in the interior space for storing bottles as recited in claim 1 of the instant application.

The Bennett reference discloses a rack disposed in the interior space of a refrigerator compartment. Bennett does not disclose a drawer. This is contrary to the invention of the instant application as claimed, in which at least one drawer is disposed in the interior space for storing bottles.

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The McConnell reference discloses a storage rack. McConnell does not disclose a drawer. This is contrary to the invention of the instant application as claimed, in which at least one drawer is disposed in the interior space for storing bottles.

Furthermore, the references do not show or suggest the at least one drawer having a plurality of rods to be releasably mounted parallel to and spaced apart from one another between the two opposite sides of the frame at selectable distances from one another, as recited in claim 1 of the instant application.

The Bennett reference discloses a continuous planar rack for storing beverages in a cooling compartment. The Bennett reference does not disclose a plurality of rods releasably mounted to and spaced apart from one another. This is contrary to the invention of the instant application as claimed, in which the at least one drawer has a plurality of rods to be releasably mounted parallel to and spaced apart from one another between the two opposite sides of the frame at selectable distances from one another.

The Bennett reference discloses a continuous planar rack for storing beverages in a cooling compartment. The Examiner correctly stated that the Bennett reference does not disclose

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a drawer formed out of a frame and including rods. This is contrary to the invention of the instant application as claimed, in which the at least one drawer has a plurality of rods to be releasably mounted parallel to and spaced apart from one another between the two opposite sides of the frame at selectable distances from one another.

The McConnell reference discloses C-shaped deck panels. The McConnell reference does not disclose a plurality of rods. This is contrary to the invention of the instant application as claimed, in which the at least one drawer has a plurality of rods to be releasably mounted parallel to and spaced apart from one another between the two opposite sides of the frame at selectable distances from one another.

The references applied by the Examiner do not teach or suggest all the claim limitations. Therefore, it is believed that the Examiner has not produced a *prima facie* case of obviousness.

Furthermore, it is applicants' position that a person of ordinary skill in the art would not modify the rack (56) of Bennett as suggested by the Examiner because the modification would destroy the function of Bennett. More specifically, the Bennett reference discloses a refrigerator for storing a beverage container in a commercial establishment.

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Accordingly, as can be seen in Fig. 2 of Bennett, the beverage containers are disposed in a vertical or standing position so as to maximize the number of containers that can be placed on the rack and to allow a consumer to be able to identify the product in containers. The use of spaced apart rods would not allow the containers to be disposed in a vertical or standing position. Therefore, the modification as suggested by the Examiner would destroy the intended function of the rack (56) of Bennett. Since the modification of the rack (56) of Bennett as suggested by the Examiner would destroy the intended function of the rack, there is no motivation to modify the rack of Bennett as suggested by the Examiner.

Based on the above-given comments, claim 1 is believed to be allowable over Bennett in view of McConnell.

Since claim 1 is believed to be allowable over Bennett in view of McConnell, dependent claims 6-9, and 11 are believed to be allowable over Bennett in view of McConnell as well.

In item 6 on page 4 of the Office action, claim 5 has been rejected as being obvious over Bennett (U.S. Patent No. 5,330,261) in view of McConnell (U.S. Patent No. 4,101,233) and further in view of Kay (U.S. Patent No. 5,322,173) under 35 U.S.C. § 103. Kay does not make up for the deficiencies of

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Bennett and McConnell. Since claim 1 is believed to be allowable over Bennett in view of McConnell, dependent claim 5 is believed to be allowable over Bennett in view of McConnell as well.

It is accordingly believed to be clear that none of the references, whether taken alone or in any combination, either show or suggest the features of claim 1. Claim 1 is, therefore, believed to be patentable over the art and since all of the dependent claims are ultimately dependent on claim 1, they are believed to be patentable as well.

In view of the foregoing, reconsideration and allowance of claims 1-11 are solicited.

In the event the Examiner should still find any of the claims to be unpatentable, counsel respectfully requests a telephone call so that, if possible, patentable language can be worked out.

Petition for extension is herewith made. The extension fee for response within a period of one month pursuant to Section 1.136(a) in the amount of \$120 in accordance with Section 1.17 is enclosed herewith.

12-22-'04 12:04 FROM-Lerner & Greenberg

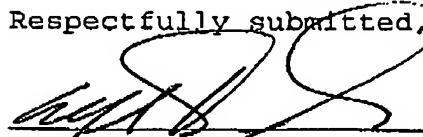
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Please charge any other fees which might be due with respect
to Sections 1.16 and 1.17 to the Deposit Account of Lerner &
Greenberg P.A., No. 12-1099.

Respectfully submitted,



For Applicant(s)

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